

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 17-1630 RB

MATTHEW J J LYONS,

Defendant.

MEMORANDUM OPINION AND ORDER

This matter came before the Court for jury trial on October 3–6, 2017. The jury was unable to reach a unanimous verdict, and indicated to the Court that they were “deadlocked on all three counts” and that their “minds [would] not be further changed” even if they were given additional time.

The government asked the Court to provide the *Allen* Instruction to the jury. The Court noted, however, that this jury had been particularly active—asking over 20 questions of witnesses—and that the jury had deliberated for over six hours. The activity of the jury and the time they had to deliberate lent credence to the jury’s claim that they would not agree even given extra time.

Additionally, several jurors had indicated that they would not be available to serve on the jury the following week. Furthermore, this development came during a Friday evening before a long weekend, and many other jurors were from out of town and would have been greatly inconvenienced by the travel required to return to the Courthouse. The Court found that to give the *Allen* instruction would have been unduly coercive and would have imposed such pressure on the jury that the accuracy and integrity of any verdict would have been uncertain. For the above

reasons, the Court determined that the *Allen* Instruction would have been inappropriate, and that manifest necessity required the Court to declare a mistrial because the jury could not reach a verdict.

Thus, the Court orders a mistrial as to the Indictment and discharges the jury. The government may retry the defendant, Mr. Lyons, on the charges contained in the Indictment.


ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE